

M/s. Kartik International & Ors. v. Central Bank of India & Ors.

M/s. Kartik International & Ors.

...Appellant

Central Bank of India & Ors.

...Respondent

Case No: Appeal No. 69/2010

Date of Judgement: 11/04/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Puneet Gogad along with Deshpande, Advocate.

For Respondent: Mr Dinesh Purandare, i/b M/s. T.N. Tripathi & Co., Advocate.

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Facts:

Appeal No. 69/2010 was filed by Defendants Nos. 1 to 6 in Original Application (O.A.) No. 234/2001 before the Debts Recovery Tribunal-I, Mumbai (DRT), challenging the judgment dated 06/11/2009. The 1st Respondent was the original Certified Creditor, Central Bank of India, whose debt was assigned to the 3rd Respondent. The Appellants filed M.A. No. 225/2010 for waiver of deposit, and the Debts Recovery Appellate Tribunal (DRAT) directed them to deposit ₹2 crores as pre-deposit under Section 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB & FI Act). The Appellants challenged the DRAT's order in Writ Petition No. 1119/2016 before the Bombay High Court, which was dismissed, and subsequently, in Special

Leave Petition (SLP) No. 9515/2016 before the Supreme Court, where they were granted an extension to deposit the amount. The Appellants deposited ₹2 crores with the DRAT Registrar on 04/05/2016, which was recorded by the Supreme Court vide order dated 11/05/2016. The 3rd Respondent filed I.A. No. 2/2016 before the Supreme Court for the release of the ₹2 crores deposited by the Appellants, along with accrued interest. The Supreme Court, vide order dated 28/11/2016, directed the DRAT to dispose of Appeal No. 69/2010 expeditiously and put the deposited amount in an interest-bearing fixed deposit, with appropriate orders concerning the disposal of the amount to be passed at the time of disposing of the appeal. The DRAT dismissed the appeal vide order dated 27/06/2018, which was upheld by the Bombay High Court in Writ Petition No. 10514/2018 and the Supreme Court in SLP No. 1988/2020 (dismissed on 22/08/2022). Recovery Proceeding No. 140/2019 was pending before the Recovery Officer for the recovery of the debt. The 3rd Respondent applied to the Recovery Officer in Recovery Proceeding No. 140/2019 for the attachment of the ₹2 crores lying in deposit with the DRAT. The Recovery Officer, vide order dated 08/08/2018, restrained the Appellants from withdrawing the ₹2 crores and communicated the restraining order to the DRAT. The Appellants sought adjournment in the Recovery Proceedings, stating that an SLP had been filed before the Supreme Court and undertook not to withdraw the ₹2 crores lying in deposit before the DRAT. The Supreme Court, vide order dated 20/11/2016, left it to the DRAT to decide on the release of the deposit. The 3rd Respondent filed M.A.(L) No. 377/2022 before the DRAT, but it was declined registration by the Registrar, who opined that the claim over the deposited amount had to be decided by the Recovery Officer. The 3rd Respondent then approached the Recovery Officer for the realization of the deposited amount. The Recovery Officer, vide order dated 22/08/2022, held that due to the Supreme Court's order, it was for the DRAT to decide on the release of the deposit. The 3rd Respondent filed M.A. No. 3/2023 before the DRAT for favorable orders to release the deposited amount, along with accrued interest, for appropriation towards the debt due. The Appellants filed M.A. No. 15/2023 before the DRAT to refund the pre-deposit amount of ₹2 crores, along with accrued interest, contending that the amount was deposited as a precondition for considering the

appeal and was not a part of the secured asset.

Arguments by the Parties:

Certified Creditor's (3rd Respondent) Arguments:

The Supreme Court, while disposing of the application filed by the Creditor laying a claim over the pre-deposit amount, directed the DRAT to consider the appeal and dispose of it within a timeframe and make appropriate orders concerning the disposal of the amount. There was no direction from the Supreme Court to return or refund the amount to the Appellant on disposal of the appeal. The DRAT has the authority to decide regarding the disbursement of the amount, and since a huge amount is to be recovered from the Appellants, it is appropriate to release the amount to the Creditor for realization towards the debt. The Creditor relied on the decisions in *Chowthmull Maganmull vs. The Calcutta Wheat & Seeds Association* 1924 SCC OnLine Cal 335 (Calcutta High Court) and *Central Bank of India vs. State of Gujarat & Ors* (1987) 4 SCC 407 (Supreme Court) to argue that on dismissal of an appeal filed by the judgment debtor, the amount on deposit should be payable to the decree-holder, and the court could direct payment of the decretal amount to the decree-holder.

Appellants' Arguments:

The question of who is entitled to the pre-deposit amount made to entertain the appeal is no longer *res integra*, given the Supreme Court's decision in *Axis Bank vs. SBS Organics Private Limited & Ors.* (2016) 12 SCC 18, where it was held that upon disposal of the appeal, the borrower is entitled to a refund of the pre-deposit made as a precondition to filing the appeal. The Appellants relied on the Supreme Court's decision in *KUT Energy Private Limited & Ors vs. Authorised Officer, Punjab National Bank, Large Corporate Branch, Ludhiana & ORS* (2020) 19 SCC 533, which followed the *Axis Bank* decision. There was no order of attachment made by the Recovery Officer in the Recovery Proceedings; there was only an injunction restraining the Appellants from withdrawing the amount, which they had undertaken not to do until the disposal of the SLP. The Recovery

Officer subsequently disposed of the application without any orders of attachment. There was neither an injunction nor attachment of the pre-deposit amount in favor of the Creditor. The Appellants relied on the Supreme Court's decision in State of U.P. & Ors vs. Prem Chopra 2022 SCC OnLine SC 1770 to argue that an order of stay granted during the pendency of a proceeding comes to an end with the dismissal of the substantive proceedings, and thus, the injunction granted by the Recovery Officer restraining the Appellants from withdrawing the amount came to an end upon dismissal of the claim, as the claim of the parties over the deposit had to be determined by the DRAT. The Appellants submitted that the pre-deposit amount, along with accrued interest, should rightfully be refunded to them.

Court's Elaborate Opinions:

The DRAT distinguished the present case from the Axis Bank decision, as the Certified Creditor had obtained a Recovery Certificate against the borrowers in the O.A., and the amount due was determined and crystallized. The Creditor had initially moved the Supreme Court for appropriating the deposited amount towards the debt, but since the appeal was pending before the DRAT, the Supreme Court relegated the decision to the DRAT to be considered while disposing of the appeal. Although the appeal was dismissed, the fate of the deposit was left to be determined, and the Creditor had filed an application before the DRAT claiming the amount, which was rejected by the Registry. The Creditor then filed a petition before the Recovery Officer, who had initially granted a stay but did not pass any order attaching the deposit, which was within the Recovery Officer's jurisdiction. The Creditor had moved the forums for appropriate orders but failed to get any favorable orders, and the Creditor could not be faulted for this. The DRAT held that the decision in Axis Bank did not apply to the instant case, as there was a huge debt outstanding to be realized from the Appellants, and the amount in the deposit was only a small portion of the public money to be recovered. The DRAT was of the considered view that the amount in the deposit, along with the accrued interest, had to be released to the Applicant (Creditor) in M.A. No. 3/2023, as the connected M.A. No. 15/2023 filed by the Appellants was devoid of

merits and deserved to be dismissed.

Cases Cited:

Axis Bank vs. SBS Organics Private Limited & Ors. (2016) 12 SCC 18 (Supreme Court)

KUT Energy Private Limited & Ors vs. Authorised Officer, Punjab National Bank, Large Corporate Branch, Ludhiana & ORS (2020) 19 SCC 533 (Supreme Court)

State of U.P. & Ors vs. Prem Chopra 2022 SCC OnLine SC 1770 (Supreme Court)

Chowthmull Maganmull vs. The Calcutta Wheat & Seeds Association 1924 SCC OnLine Cal 335 (Calcutta High Court)

Central Bank of India vs. State of Gujarat & Ors (1987) 4 SCC 407 (Supreme Court)

Sections and Laws Referred:

Section 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB & FI Act) – Deposit of an amount of debt due on filing appeal.